

# BakerHostetler

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June 18, 2019

### VIA ELECTRONIC MAIL & ECF

Honorable Stuart M. Bernstein  
United States Bankruptcy Court  
Southern District of New York  
One Bowling Green, Room 723  
New York, NY 10004-1408  
Bernstein.chambers@nysb.uscourts.com

Re: *Picard v. Fairfield Inv. Fund Ltd. et al.*, Adv. Pro. No. 09-01239 (SMB);  
*Picard v. Fairfield Greenwich Capital Partners et al.*, Adv. Pro. No. 12-01702 (SMB);  
*Picard v. Toub, et al.*, Adv. Pro. No. 12-01703 (SMB);  
*Picard v. Fairfield Greenwich Group (In re Fairfield Sentry Ltd.)*, Adv. Pro. No. 10-03800 (SMB)

Dear Judge Bernstein:

We are counsel to Irving H. Picard, the Trustee for the liquidation of the business of Bernard L. Madoff Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa-III, and the substantively consolidated estate of Bernard L. Madoff. We write to apprise the Court of recent progress made in the above-referenced adversary proceedings.

#### *Mediation*

The Trustee and Defendants in the above-referenced adversary proceedings have agreed to enter into a mediation concerning three of the four above-referenced adversary proceedings; the fourth adversary proceeding, *Picard v. Toub, et al.*, Adv. Pro. No. 12-01703, will be dismissed.<sup>1</sup> The parties have spoken with a mediator and will be submitting a stipulation agreeing to the mediation once all interested parties have provided authorization.

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<sup>1</sup> This agreement does not include the counterclaim asserted by Fairfield Greenwich (Bermuda) Limited against Fairfield Sentry Limited (In Liquidation) in Adversary Proceeding No. 10-03800 pending in Case No. 10-13164.

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*Defendants' Pending Motion to Dismiss the Proposed Second Amended Complaint (In re Fairfield Sentry Ltd.)* Adv. Pro. No. 10-03800 (SMB)

The Trustee's opposition to Defendants' Motion to Dismiss the Proposed Second Amended Complaint is due June 24. The parties have agreed that because of their intent to mediate, a response would not be beneficial at this time and therefore they have agreed to extend the deadline while attempting to reach a resolution. The parties will submit a stipulation requesting the Court's approval of the extended briefing schedule with respect to the motion to dismiss that will allow for the mediation.

*Tolling Agreement in Picard v. Toub, et al.* (Adv. Pro. No. 12-01703)

The Trustee and Defendants in *Picard v. Toub, et al.*, Adv. Pro. No. 12-01703, have agreed to enter into a tolling agreement. The agreement will be filed with the Court in the coming weeks and shortly thereafter, the Trustee will dismiss this proceeding without prejudice.

*Consolidation of Related Actions*

The Trustee and Defendants have agreed to consolidate the following two actions:

- *Picard v. Fairfield Inv. Fund Ltd. et al.*, Adv. Pro. No. 09-01239 (SMB); and
- *Picard v. Fairfield Greenwich Capital Partners et al.*, Adv. Pro. No. 12-01702 (SMB).

Following significant settlements and dismissals, the remaining defendants in these actions are substantially similar, and there exists substantial factual overlap and common issues of law. The parties will submit a stipulation for consolidation, requesting that the Court consolidate these actions for any and all purposes and proceed under Adv. Pro. No. 09-01239 (SMB).

*Adjournment of the June 26 Pre-Trial Conference*

Finally, after the consolidation of the actions, and to allow for the mediation, the parties will be submitting a stipulation for six-month adjournment (to December 18, 2019) of the conference scheduled in *Picard v. Fairfield Inv. Fund Ltd. et al.*, Adv. Pro. No. 09-01239 (SMB).

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If Your Honor has any questions, the parties are prepared to address them either by phone or in person.

We appreciate Your Honor's continued attention to this matter.

Respectfully submitted,

*/s/ Oren J. Warshavsky*

Oren J. Warshavsky

cc: Counsel of Record